

Provisional Minutes of the 30th Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On August 29, 2023, the 30th meeting of the Family Law Subcommittee of the Legislative Council was held at the Ministry of Justice (in person and online). Nearly all the members and non-voting members attended the meeting. The Chairman, Prof. OMURA Atsushi, presided over the meeting.

Presented the draft of the proposed outline with the full picture of the issues based on the deliberations up to the third round along with a supplementary explanation, the Subcommittee discussed the following issues.

With regard to the basic rules concerning the parent-child relationship, the Subcommittee discussed the rules that should be established to define parental duties and responsibilities of the parent-child relationship, and many members and non-voting members agreed to establish such rules. It was also agreed that the duties and responsibilities of the parents should be discussed in more detail.

With regard to the rule concerning the exercise of parental authority, the Subcommittee discussed the proposals: 1) if parental authority is granted to both parents, they should exercise parental authority jointly; however, if there are pressing circumstances in the best interests of the child or when they perform daily activities related to child custody and their child's education, etc., one parent may solely exercise parental authority, and 2) if the parents are still unable to reach an agreement on the exercise of parental authority over specific arrangements, a family court may determine that one parent may solely exercise parental authority over the relevant arrangements.

Moreover, with regard to the framework for determining parental authority after divorce (on the condition that the provisions of the current Civil Code stating that parents or the court must determine either of the parents as the person with parental authority are amended), the Subcommittee discussed the proposals: 1) if parents divorce by agreement, the parents should determine one or both parents as the person who has parental authority through negotiations, 2) in the case of judicial divorce, the court should determine one or both parents as having parental authority, 3) when the judge makes the decision, he/she should consider the parent-child relationship and relationship between the parents, and 4) if the parents reached the agreement in an inappropriate way, in the case of divorce by agreement, etc., the court may modify its decision on parental authority if a petition to change parental authority was filed.

With regard to the custodial parent, on the condition that parents are not always

required to determine either parent as the custodial parent, the Subcommittee discussed the proposal: If the person who has custody was determined by the court, physical custody may be granted solely to that person, and a person who does not have custody may also perform daily activities related to child custody and the child's education to the extent that the person does not prevent the person who has parental authority from exercising the right to have the child in his/her care.

There were different views regarding these issues, and some agreed to the details of the draft while others suggested changes. However, the Subcommittee did not reach a conclusion during the meeting due to time constraints and decided to discuss the issues at the next meeting.

The Subcommittee will discuss the issues, including the other arrangements (child support payments, parent-child visitation, adoption, equitable distribution of property, etc.) which are included in the draft.

※These provisional minutes are the summarized results of the subcommittee meeting and are to be provided by the Secretariat of the Subcommittee in both Japanese and English on an as-needed basis. The official meeting minutes (in Japanese) will be published at a later date.